

Fair Political Practices Commission

Memorandum

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

From: William L. Williams, Jr., Chief of Enforcement
Carla Wardlow, Technical Assistance Division Chief

Date: November 29, 2006

Subject: Diversion Program Follow-up

BACKGROUND

At the October 24, 2006, meeting, staff presented to the Commission the outlines of a Diversion Program and also orally presented the option of broadening the streamlined programs in lieu of a Diversion Program. At that meeting, the Commission requested that staff return at the Commission's December meeting to present estimates of staff time that might be saved with a Diversion program and present the streamlined option in a more definitive form.

POTENTIAL STAFF TIME SAVED WITH A DIVERSION PROGRAM

At the October meeting, staff presented three diversion options, one using a qualifying percentage [of financial non-disclosure] threshold for participation in the program, and the two other options using set maximum monetary caps of \$30,000 and \$50,000 as the thresholds for participation in the Diversion Program. Because the percentage threshold resulted in projected negligible participation in the program, that option has been dropped for purposes of this memorandum. Set forth below as Options 1 and 2 are the two monetary cap options.

Option No. 1

- Sender identification allegations where the candidate or committee can be identified and does not otherwise comply with statute or regulation;
- Complaints against city or county clerks who fail to provide public access to campaign statements or statements of economic interests;
- Major Donor committees that fail to file semi-annual campaign reports where the total amount of contributions made is no more than \$30,000;
- Recipient committees that fail to file semi-annual campaign reports where the total amount of contributions received is no more than \$30,000;

- Recipient committees that fail to file pre-election campaign reports where the total amount of contributions received is no more than \$30,000;
- Recipient committees that fail to report contributions or expenditures when:
 - The amount of unreported contributions is no more than \$30,000 during the reporting period;
 - The amount of the unreported expenditures is no more than \$30,000 during the reporting period;
- Recipient and major donor committees that fail to file or untimely file late campaign reports when the amount of the combined unreported late contributions is no more than \$30,000 in that calendar year;
- A recipient committee's failure to report complete donor information under section 84211 where all contributions were subsequently returned to the contributors;
- Recordkeeping violations where:
 - The amount of contributions with missing or incomplete records is no more than \$30,000 during the reporting period;
 - The amount of the expenditures with missing or incomplete records is no more than \$30,000 during the reporting period;
- Subvendor violations where the amount of unreported expenditures is no more than \$30,000 during the reporting period;
- Independent expenditure committees that fail to report expenditures or that file late reports when the amount of the unreported expenditures is no more than \$30,000 during the reporting period;
- Any unreported contribution by a major donor committee when the amount unreported is no more than \$30,000 during the reporting period;
- Lobbying disclosure violations of no more than \$30,000 during the reporting period;
- Gift limit violations of no more than \$100 above the statutory gift limit for non-lobbyists;
- Technical disqualification violations involving the manner of disqualification; or
- Slate mailer semi-annual campaign statements where the amount unreported is no more than \$30,000 during the reporting period.

Option No. 2

- Sender identification allegations where the candidate or committee can be identified and does not otherwise comply with statute or regulation;
- Complaints against city or county clerks who fail to provide public access to campaign statements or statements of economic interests;
- Major Donor committees that fail to file semi-annual campaign reports where the total amount of contributions made is no more than \$50,000;
- Recipient committees that fail to file semi-annual campaign reports where the total amount of contributions received is no more than \$50,000;
- Recipient committees that fail to file pre-election campaign reports where the total amount of contributions received is no more than \$50,000;
- Recipient committees that fail to report contributions or expenditures when:
 - The amount of unreported contributions is no more than \$50,000 during the reporting period;
 - The amount of unreported expenditures is no more than \$50,000 during the reporting period;
- Recipient and major donor committees that fail to file or untimely file late campaign reports when the amount of the combined unreported late contributions is no more than \$50,000 in that calendar year;
- A recipient committee's failure to report complete donor information under section 84211 where all contributions were subsequently returned to the contributors;
- Recordkeeping violations where:
 - The amount of contributions with missing or incomplete records is no more than \$50,000 during the reporting period;
 - The amount of the expenditures with missing or incomplete records is no more than \$50,000 during the reporting period;
- Subvendor violations where the amount of unreported expenditures is no more than \$50,000 during the reporting period;

- Independent expenditure committees that fail to report expenditures or that file late reports when the amount of the unreported expenditures is no more than \$50,000 during the reporting period;
- Any unreported contribution by a major donor committee when the amount unreported is no more than \$50,000 during the reporting period;
- Lobbying disclosure violations of no more than \$50,000 during the reporting period;
- Gift limit violations of no more than \$100 above the statutory gift limit for non-lobbyists;
- Technical disqualification violations involving the manner of disqualification; or
- Slate mailer semi-annual campaign statements where the amount unreported is no more than \$50,000 during the reporting period.

Projected Potential Participation in the Program and Staff Time Savings

Under Option 1, using the 2004 case sampling and the \$30,000 threshold, including streamlined eligible cases, 95 cases were potentially eligible for the Diversion Program. Subtracting out the streamlined eligible cases, 75 cases would have been eligible for the Diversion Program. The majority of these cases would be campaign non-disclosure or campaign non-filing cases. Based on the 2004 sampling, using the figure of 75 non-streamlined cases and assuming a 70% participation rate, 155 staff hours¹ would have been saved on those cases if they had been referred to the Diversion Program.

Under Option 2, using the 2004 case sampling and the \$50,000 threshold, including streamlined eligible cases, 106 cases were potentially eligible for the Diversion Program. Subtracting out the streamlined eligible cases, 82 cases would have been eligible for the Diversion Program. As with Option 1, the majority of these cases would be campaign non-disclosure or campaign non-filing cases. Based on the 2004 sampling, using the figure of 82 non-streamlined cases and assuming a 70% participation rate, 242 staff hours² would have been saved on those cases if they had been referred to the Diversion Program.

The above staff time savings would be offset against the Enforcement Division's estimated (using the 2004 case sampling) 156 additional hours of non-attorney staff time and 26 hours of attorney staff time associated with ongoing operation of the program over a year and the 250 non-attorney hours and 200 attorney hours for the start up of Diversion Program in the first year program. Additionally, it would be offset against the Technical Assistance Division's

¹ To arrive at this estimate, the total number of staff hours saved for the 75 cases, 221.5 total hours of investigator and attorney time, was multiplied by a factor of .7. However, it should be noted that only 13 of the 75 cases had any investigator and attorney hours attributed to them.

² To arrive at this estimate, the total number of staff hours saved for the 82 cases, 345 total hours of investigator and attorney time, was multiplied by a factor of .7. However, it should be noted that only 16 of the 82 cases had any investigator and attorney hours attributed to them.

estimated start up of 400 hours to expand educational programs at a barebones level for the program. Because there is no track record for a Diversion Program, these are very rough projections both as to the staff time saved and used to start up and operate the program.

EXPANSION OF EXISTING STREAMLINED PROGRAMS IN LIEU OF A DIVERSION PROGRAM

At the October meeting, staff suggested an expansion of the existing streamlined programs as an alternative to starting up a Diversion Program. The primary benefit of expanding the streamlined programs is that it would not involve substantial start-up, and could be operated by the Political Reform Consultant(s) that currently operate the streamlined programs. The limited start-up would entail modification of the current streamlined program inquiry letters for major donor non-filers for use with recipient committee non-filers, and would probably not require an implementing regulation. Procedurally, referrals could be made at the initiation of the complaint intake process based on whether the recipient committee comes within the maximum qualifying activity amounts for participation and/or whether it should be excluded from participation under the discretionary criteria for the streamlined program. The need to develop new training programs and expand current ones would also be avoided. Additionally, there would be no need for staff time associated with periodically presenting Diversion educational programs, follow-up monitoring, and certification of completion of training or reinstitution of the enforcement action.

An expanded streamlined program would entail much less severe penalties for participants, but it would still have a public punitive aspect unlike the Diversion Program. While the primary educational aspect of the expanded streamlined program would be notice of the violation and deterrence of future violations, it would be fairly easy to disseminate educational materials regarding various obligations under the Act in conjunction with the expanded program.

Substantively, the first issue to be determined by the Commission would be the appropriate maximum level of financial activity for participation, much like the \$30,000 and \$50,000 caps set forth in relation to participation in the Diversion Program. As recipient committees are involved in both receiving contributions and making expenditures, it would have to be determined whether the maximum cap for participation would be applied to the combined amounts of contributions received and expenditures made, the amount of contributions received *or* expenditures made, the amount of contributions received as a stand alone criterion, or the amount of expenditures made as a stand alone criterion.

In terms of the types of violations that would be included in an expanded streamlined program, it should be limited to violations involving non-filing of campaign statements because the streamlined program depends on evidentiary simplicity to maintain its speed and efficiency. The main issue to determine here would be what types of non-filing violations would be included: semi-annual campaign statements, pre-election campaign statements, late contribution reports, late independent expenditure reports, 85309 reports, and/or 85500 reports.

CONCLUSION

At this point, it is really a question of the Commission's preference. Staff has set forth a rough comparison of the Diversion Program and an expanded streamlined program. If the Commission determines that there should be a Diversion Program, the next step would be the notice and adoption of an authorizing regulation followed closely by the Commission's adoption of the program's terms, as largely set forth in staff's October 10, 2006, memorandum. If the Commission determines that expansion of the existing Streamlined Program is the best course of action, staff could have a streamlined program memorandum for the Commission's consideration at its February or March meeting.